

# THIRTEENTH ANNUAL REPORT

## 1979

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ONTARIO LAW REFORM COMMISSION



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Ministry of the  
Attorney  
General



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General

The Ontario Law Reform Commission was established by section 1 of *The Ontario Law Reform Commission Act* to further the reform of the law, legal procedures and legal institutions. The Commissioners are:

DEREK MENDES DA COSTA, Q.C., LL.B., LL.M., S.J.D., *Chairman*

HONOURABLE GEORGE A. GALE, C.C., Q.C., LL.D.

HONOURABLE RICHARD A. BELL, P.C., Q.C.

\* HONOURABLE JAMES C. MCRUER, O.C., LL.D., D.C.L.

WILLIAM R. POOLE, Q.C.


BARRY A. PERCIVAL, Q.C.

M. Patricia Richardson, M.A., LL.B., is Counsel to the Commission. The Secretary of the Commission is Miss A. F. Chute, and its offices are located on the Sixteenth Floor at 18 King Street East, Toronto, Ontario, Canada.

\* The Honourable James C. McRuer, the first Chairman of the Commission and Vice Chairman until February, 1977, resigned as a full-time Member of the Commission effective June, 1977. However, Mr. McRuer agreed to remain a Commissioner in relation to the projects on the Law of Trusts and the Enforcement of Judgment Debts, in the development of which he has been much involved.

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Ontario  
Law Reform  
Commission

To The Honourable R. Roy McMurtry, Q.C.  
Attorney General for Ontario

Dear Mr. Attorney:

We have the honour to present the Thirteenth Annual Report of the Ontario Law Reform Commission, for the period April 1, 1979 to March 31, 1980.





## INTRODUCTION

This Report deals with the activities of the Commission during the period April 1, 1979 to March 31, 1980. This past year has been an extremely busy and productive year for the Commission.

As anticipated in our last Annual Report, we are pleased to record that we completed our *Report on Products Liability*. In December, 1979, this Report was tabled by the Attorney General in the Legislature. The Commission has also produced two earlier Reports on related topics: namely, the *Report on Consumer Warranties and Guarantees in the Sale of Goods* (1972), and the *Report on Sale of Goods* (1979). The *Report on Products Liability* now completes the first phase of the Commission's Programme on Commercial Law.

The second phase of the Commission's Programme on Commercial Law was commenced during the past year by the Commission adding to its programme a new project, the Law of Contract Amendment project.

At present, the Commission has ten projects on its programme. It is apparent that a great deal of research, balance and coordination is involved in the task of bringing these projects forward in an orderly fashion. Two major projects, the project on the Law of Trusts and the project on the Enforcement of Judgment Debts, are near conclusion. We expect that we will complete our *Report on the Law of Trusts*, and possibly our *Report on Enforcement of Judgment Debts* in the coming year.

During the past year there has been noteworthy legislative activity concerning matters upon which we have previously reported. *The Powers of Attorney Act, 1979*, and *The Religious Organizations' Lands Act, 1979*, substantially implement, respectively, our *Report on Powers of Attorney* (1972) and the recommendations of the Commission concerning religious institutions contained in the *Report on Mortmain, Charitable Uses and Religious Institutions* (1976). Bill 202, being a Bill introducing *The Occupiers' Liability Act, 1980*, contains in proposed legislative form many of the recommendations formulated by the Commission in the *Report on Occupiers' Liability* (1972) including, with exceptions, the basic recommendation that there should be a common duty of care. Needless to say, the Commission has derived much satisfaction from this continued implementation of its Reports.

The past year has also seen change in the membership of the Commission. On November 27, 1979, W. Gibson Gray, Q.C., was appointed a Justice of the Supreme Court of Ontario. On January 30, 1980, the Premier of Ontario, the Honourable William G. Davis, Q.C., announced the appointment of Barry A. Percival, Q.C., of Toronto as a Member of the Ontario Law Reform Commission to succeed Mr. Gray.

We would mention one other event of significance that occurred during the past year. In the *Report on Sale of Goods*, the Commission pointed out that it

would be unfortunate if the adoption of the revised Act, recommended by the Commission, were to create unintended impediments to the free flow of goods between the Provinces. Accordingly, we urged the early involvement of the Uniform Law Conference of Canada to explore the possibility of securing the adoption of a Uniform Sale of Goods Act, hopefully based on our draft Act. At the Sixty-first Annual Meeting of the Uniform Law Conference, held at Saskatoon in August, 1979, the Uniform Law Section of the Conference, pursuant to the Report of the Ontario Commissioners, established a Committee on the Sale of Goods. The mandate of this Committee is to consider the need for uniform sale of goods legislation, and, if such a need exists, to assess the utility of the Ontario Law Reform Commission's *Report on Sale of Goods* as a basis for such a uniform law. This Committee has been active and it is to be hoped that its Report will be presented to the 1981 meeting of the Uniform Law Conference.

## THE PROGRAMME: REFERRED MATTERS

Section 2(1)(d) of *The Ontario Law Reform Commission Act* requires the Commission to inquire into and to consider any matter relating to any subject referred to it by the Attorney General. No new matters were referred to the Commission during the period covered in this Report. During the year, research on a prior Reference, the Class Actions project, continued.

## PROJECTS IN PROCESS

### *Class Actions*

Work on the Class Actions project continued during the past year and a substantial portion of the research has now been completed.

The Class Actions project involves an investigation of the desirability of the development of class actions beyond the confines of Rule 75, which governs the bringing of class actions in Ontario. The terms of reference of the project include an investigation of the potential impact of class actions on the Ontario court system, and an examination of alternatives to class actions.

During the course of the project, the Commission has considered the need, if any, for an expanded class action mechanism in Ontario, and, in this connection, has discussed research papers on the following topics: the historical origins of class actions; the status of class actions in Ontario under Rule 75; present alternatives to class actions, such as consolidation, joinder and test cases; issues of procedural and substantive law relating to class actions; and, the costs and benefits of class actions, as evaluated in the light of existing empirical evidence. The Commission has also considered a research paper dealing with alternative class action models, and an economic analysis of class actions prepared by outside experts. At the present time, meetings are being held to discuss a number of research papers that deal with the following issues: whether a class action should require certification before it can be permitted to proceed as a class action; and

the tests, if any, a plaintiff should be required to meet before a class action can be certified.

Scheduled for discussion during the coming year are research papers dealing with the important issues of opting in and opting out, notice, damages, discovery, *res judicata*, and costs. In addition, research will be completed on a number of topics, including settlement, jurisdictional and choice of law issues, limitation periods and defendant class actions.

## THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION

Under its founding statute, the Commission may inquire into and consider any matter relating to reform of the law. Accordingly, the Commission may initiate research on its own motion. During the past year, two projects were commenced in this way: namely, the Law of Contract Amendment project, and the Contribution Among Wrongdoers project.

### (a) COMPLETED PROJECTS

#### *Products Liability*

In October, 1979, the Commission submitted its *Report on Products Liability* to the Attorney General. Included as an appendix to the Report is a proposed *Products Liability Act* designed to revise the law relating to products liability in Ontario. The Products Liability project, initiated by the Commission in March, 1977, was a direct outgrowth of the Commission's study of the law relating to the sale of goods in Ontario. During the course of that study, it became apparent that the existing products liability law of Ontario, with its anomalies and inconsistencies, was not adequate, particularly in light of the technological and marketing developments of recent years.

The most significant recommendation of the Commission is the proposal for the legislative recognition of a principle of strict liability in tort. The Commission recommends that this principle should apply not only where a person supplies a defective product that causes injury, but also where a person supplies a product and makes a false statement concerning the product, reliance upon which causes injury, whether or not the reliance is that of the person injured. The Report recommends that the principle of strict liability should cover personal injury and damage to property, together with economic loss consequent thereon. However, this recommendation does not extend to property used in the course of carrying on a business, nor to pure economic loss. In respect of these latter categories of loss, it should be noted that it is also recommended that the rights and liabilities created by the proposed *Products Liability Act* should supplement any rights and liabilities already extant in law.

The Report recommends that the proposed principle of strict liability should apply to any person who supplies a product in the course of his business, so long



as the product is of a kind that it is his business to supply, and even though he has not supplied products of the same kind previously or the product is supplied for promotional purposes. The Report further recommends that the proposed principle of strict liability should comprehend all products, whether tangible or intangible, and whether attached to or incorporated into real or personal property. However, it is recommended that the proposed principle of strict liability should not apply to a person who supplies a product in a non-business context.

The Commission recommends that the class of person entitled to recover under the proposed principle of strict liability should not be restricted in any way other than by the general tort limitations of proximity and causation. In particular, the Report recommends that the bases of liability now contained in Part V of *The Family Law Reform Act, 1978*, should be broadened so as to enable dependants' claims to be founded upon a showing of the recommended principle.

Turning to the subject of limitations and defences, the Report recommends as follows: (1) that there should be no monetary limit upon the compensation that may be recovered in an action based upon the proposed principle of strict liability; (2) that there should be no special limitation or cut-off period applicable to claims under the principle; and, (3) that the defences of assumption of risk and contributory negligence should be available in respect of claims brought under the principle.

The Report discusses in some detail the rights of contribution and indemnity that may be claimed under the proposed *Products Liability Act*. Consistent with the philosophy underlying the recommendation for the adoption of a principle of strict liability, the Report recommends that a supplier who is subjected to liability thereunder should be entitled to indemnification from any prior supplier of the product who also would be liable under the proposed Act. The Report recommends that, in addition to the right to claim indemnification, suppliers should be entitled to claim contribution from any person, whether another supplier or not, who also would be liable to the person injured. Although, as between themselves, suppliers may contract out of the provisions respecting contribution and indemnity, the Commission recommends that a supplier should not be able to exclude or restrict liability to a person claiming under the proposed principle of strict liability. The Report contains recommendations respecting contribution and indemnity in case of settlement, and also recommends a special limitation period for the institution of proceedings for contribution or for indemnity.

Included in the Report are a number of recommendations in respect of the jurisdiction of Ontario courts to entertain an action under the proposed *Products Liability Act*, as well as the choice of law rules to govern actions brought pursuant to the proposed Act. It is recommended that an action under the proposed Act be maintainable where, apart from the Act, the court would have jurisdiction, or where the supplier against whom the action is brought carried on business in Ontario at the time of the supply of the product in question, whether or not the prod-

uct was purchased or otherwise acquired in Ontario. The choice of law rules adopted by the Commission are as follows: in an action under the proposed *Products Liability Act*, the internal law of Ontario should apply where that law now is applicable, or where the supplier carried on business in Ontario at the time of the supply of the product. The Report recommends that any party to an action should be capable of being served out of Ontario in the manner prescribed by the rules of court. The constitutionality of the conflict of laws rules is canvassed in some detail in the Report.

Finally, the *Report on Products Liability* includes a number of miscellaneous proposals, including a recommendation that the Crown be bound by the proposed *Products Liability Act*, and a recommendation that all actions brought under the proposed Act be tried before a judge without a jury.

## (b) PROJECTS IN PROCESS

### 1. *The Law of Trusts*

During the past year the Commission considered and approved in principle a draft *Report on the Law of Trusts* and a draft revised *Trustee Act*, containing the Commission's recommendations for reform of the law of trusts. The draft *Trustee Act* is now being reviewed, and the draft Report is undergoing the final editing process. It is anticipated that the Report and accompanying draft Act will be published before the end of the coming year.

### 2. *Administration of Estates of Deceased Persons*

This project, which originally formed part of the Commission's project on the Law of Trusts, was added to the Commission programme in November, 1977, and has proceeded under the direction of Professor George Alexandrowicz of Queen's University.

The research on the project is now substantially complete, and includes nine research papers on the following topics: the office of the personal representative; the transfer of assets of the estates of deceased persons; estates of foreign decedents; the position of the beneficiary; rights of creditors; and, Surrogate Court procedure. The objective of the project is a new *Administration of Estates Act*, which would bring together and revise relevant portions of *The Trustee Act*, *The Devolution of Estates Act*, and the provisions governing practice under *The Surrogate Courts Act* and Rules. The new Act would also codify and revise a number of the common law doctrines that now govern estate administration.

It is expected that consideration of the completed research papers will commence in the near future. In formulating its recommendations, the Commission is fortunate to have the benefit of the views of an Advisory Committee of experts in the law governing estate administration, constituted under the chairmanship of Malcolm S. Archibald, Q.C.

### ***3. The Hague Convention Concerning the International Administration of the Estates of Deceased Persons***

The International Convention, which initially formed a separate project, is now being considered together with the Commission's project on the Administration of Estates of Deceased Persons. In January, 1980, the Commission commenced consideration of a research paper prepared by Professor Marvin Baer of Queen's University, dealing with the International Convention in the context of a general consideration of estates of foreign decedents. The Commission hopes to resume consideration of the Convention, and the question whether it should be given effect in Ontario, in the near future. It has not yet been decided whether to submit a separate Report on the Estates of Foreign Decedents, including the International Convention, or to deal with these matters in the Commission's final *Report on the Administration of Estates of Deceased Persons*.

#### ***4. Basic Principles of Land Law and***

#### ***5. The Law of Mortgages***

Unfortunately, the Commission has not been able to proceed with these two important projects as speedily as it would have wished. Work on the projects has been deferred on several occasions due to the pressure of other commitments.

In past years, three substantial research papers have been prepared in the project on Basic Principles of Land Law, and during the past year, a comprehensive research design has been submitted for the project on the Law of Mortgages.

In the view of the Commission, the projects are interrelated and should, if practicable, proceed concurrently. Arrangements for the resumption of research in the Mortgages project are underway. Subject to the availability of personnel and resources, the Commission hopes to be in a position to continue study of the Basic Principles of Land Law during the coming year.

#### ***6. Enforcement of Judgment Debts***

In some areas, the substantive law and procedural rules of debtor-creditor relations in Ontario have manifested a very uneven and *ad hoc* development; in other areas, this relationship is governed by antiquated statutory and common law principles inherited from medieval England. It was in response to prevalent uncertainties, ambiguities and inconsistencies in the present law that the Commission initiated its detailed study of all facets of debtor-creditor law and practice.

The deficiencies in the present enforcement system—or, more accurately, enforcement systems—are structural, administrative, substantive and procedural. Uncoordinated and unintegrated enforcement measures are undertaken by parallel enforcement structures to enforce Supreme Court, County and District Court, Small Claims Court and Provincial Court (Family Division) judgments



and orders, resulting in a substantial degree of duplication and waste. Accordingly, the Commission has been considering the replacement of the existing enforcement structures with a comprehensive, fully integrated enforcement system, coordinating all enforcement measures in respect of judgments and orders from all courts of this Province.

Because of substantive and procedural deficiencies in the present law, the Commission has also been examining the enforcement remedies that should be available to a creditor. We have considered whether uniform rules should apply to the enforcement of judgments and orders from different court levels. The Commission has completed consideration of the following topics: execution against land; seizure and sale of personal property; creditors' relief and priorities; garnishment of wages and other debts; equitable execution; and, judgment debtor and third party examinations.

A number of draft chapters of the final *Report on Enforcement of Judgment Debts* have been written and considered by the Commission, including a revised version of the Commission's unpublished Interim Report on the Orderly Payment of Debts. This Report, which deals with the proposed federal consolidation and composition of debts scheme, has been reviewed and revised in the light of proposed new bankruptcy legislation, and will be included as a chapter in the Commission's final Report.

The Commission also has commenced work on two other areas of debtor-creditor law. A research paper on pre-judgment enforcement remedies is now being prepared, and will be considered by the Commission in the near future. In addition, a research paper on fraudulent conveyances and fraudulent preferences has been prepared and discussed. Upon consideration, the Commission has decided that fraudulent transactions should form the subject of a separate Report.

The latter Report will be concerned with a review of *The Fraudulent Conveyances Act*, R.S.O. 1970, c. 182, and *The Assignments and Preferences Act*, R.S.O. 1970, c. 34. These statutes, particularly *The Fraudulent Conveyances Act*, which is derived from Elizabethan legislation, have remained virtually unchanged over the years. At present, the law is characterized by ambiguities, inconsistencies and gaps. The Report will consider whether the law governing voidable transactions should continue to be premised on the transferor's fraudulent intent. In investigating alternatives, the Commission has examined the feasibility and desirability of a regime in which the critical issue is the effect of the transaction on the ability of the transferor's creditors to be paid, rather than the transferor's state of mind when the transaction was executed. Work on preparation of a final Report will commence with the completion of the Enforcement of Judgment Debts project.

In our examination of debtor-creditor law, we continue to be ably assisted by David E. Baird, Q.C., of Toronto.

### ***7. Declarations of Marital Status***

The Commission's project on Declarations of Marital Status is the only topic of the Family Law project that remains outstanding. The project deals with the jurisdiction of the court to declare the validity of an existing marriage, or of a foreign divorce or annulment, according to the law of Ontario. As a result of demands that have been made upon Commission resources by other projects, it has been necessary to accord the Declarations of Marital Status project a relatively low priority. However, the Commission intends to resume work on the project as soon as practicable.

### ***8. The Law of Standing***

The Law of Standing project involves an examination of the question whether the rules that now govern the status of a private individual to litigate in respect of public rights should be broadened. As a general proposition, it may be said that the present law of standing, or status to sue, has restricted public interest litigation. In order to challenge a statute or an action of a government or public agency, or to seek an injunction or damages in respect of a public nuisance, an individual must demonstrate that he has sustained damages greater than those suffered by other members of the public, or that he has some special private interest, usually a financial or property interest.

The matters of standing and class actions are conceptually distinct; however, liberalization of the rules governing the right to sue in the public interest and the bringing of class actions would serve a common function, by permitting increased access to the courts by individuals.

Although, in the early stages of the project, a background research paper was prepared by the internal legal staff dealing with the present state of the law of standing, priority has been given to the Minister's Reference on Class Actions. The Commission, however, has recently commissioned a research paper dealing with reform of the law of standing. It is anticipated that this research paper will be submitted to the Commission in the autumn of 1980, and that the Commission will be able to commence discussion of the issues raised in the paper shortly thereafter.

### ***9. Powers of Entry***

The Powers of Entry project involves an examination of Ontario statutes that give power to enter upon lands, buildings and private dwellings. In past years, the Commission has prepared a preliminary research design and compiled a table of statutes containing powers of entry. Unfortunately, recent efforts to bring the project forward have proved unsuccessful, and negotiations to appoint a Research Director are now in progress.

### ***10. Law of Contract Amendment***

The Law of Contract Amendment project was added formally to the Commission's programme in April, 1979, although preliminary steps towards organi-



zation of the project had been undertaken prior to that date. The project had its genesis in the Commission's Sale of Goods project, where the need for a comprehensive review of general contractual principles became apparent from the Commission's examination of the law of contract as it affects the sale of goods.

The Commission wishes to encourage participation by interested parties in the project as it develops. Accordingly, one initiative taken by the Commission was to advertise for submissions on problems relating to the law of contract. In addition, the Commission plans to establish an Advisory Group, whose members will be consulted by the Research Team and by the Commission in formulating recommendations.

The Law of Contract Amendment project is divided into three Phases. Phase I is concerned with formational aspects of the law of contract, and research papers have been received on the following topics:

- (1) Consideration, including firm offers, modifications, part payment, forgiveness of debts, reliance, past consideration, charitable subscriptions, compromises and intention;
- (2) The seal and nominal consideration; offer and acceptance; and, contracts for the benefit of third parties;
- (3) The formalities for the enforcement of contracts, that is, Statute of Frauds requirements (other than those involving contracts of sale of goods); and,
- (4) A comparative study of consideration.

Phases II and III deal, in general, with the substance of contractual obligations. Research papers have been commissioned in respect of the following topics, which have been allocated to Phase II:

- (1) Unconscionability;
- (2) Misrepresentation, including the relationship of misrepresentation to warranty, negligence, mistake, the Commission's Sale of Goods proposals, and consumer protection and business practices legislation, and also the question of contractual exclusion of liability for misrepresentations;
- (3) Mistake and frustration;
- (4) Illegality; and,
- (5) Penalty and forfeiture clauses.

The following topics are to be included in Phase III:

- (1) Good faith and restitution;
- (2) Aspects of the law of damages;
- (3) Contracts by persons under disability; and,
- (4) Equitable remedies for breach of contract.

The Commission expects to receive a Research Report dealing with the first Phase of the project in June, 1980, and to commence consideration of the research papers in Phase I in the autumn. While it is too early in the project to announce a rigid schedule, it is anticipated that the Commission will issue separate Reports covering each Phase of the project, and that the first Report will be completed by the summer of 1981.

The project is being directed ably by joint Project Directors, Professor Jacob S. Ziegel and Professor Stephen M. Waddams, both of the Faculty of Law, University of Toronto.

### **11. *Contribution Among Wrongdoers***

During the past year, as a result of a submission received in response to a Notice published by the Commission inviting suggestions for reform of the law, the Commission added to its programme a project on the Law of Contribution Among Wrongdoers. The present law governing the allocation of loss between two or more persons who are responsible for the same injury is highly unsatisfactory, and has been the subject of review in other jurisdictions. As the law of contributory negligence also involves the apportionment of loss, the Commission has decided to include a review of this area of the law in the project.

At common law, subject to a few exceptions, there was no contribution between wrongdoers. Where two persons contributed to the same loss or damage, the plaintiff could recover against either of them, and there was no right in the person against whom the plaintiff recovered to claim contribution from the other wrongdoer. In addition, at common law, where the plaintiff was negligent and was found to have contributed to his own injury, this constituted a complete defence to the plaintiff's claim. The harshness of these rules was modified by statute in Ontario. *The Negligence Act* authorizes contribution and indemnity among persons whose negligence has contributed to the same loss or injury, and also abrogates the rule that contributory negligence constitutes a complete defence to a plaintiff's claim. The purpose of the Commission's Contribution project is to consider whether the concepts of contribution and contributory negligence should be extended beyond *The Negligence Act*, to torts other than negligence and to causes of action arising in contract.

In December, 1979, the Commission considered a research paper prepared by a member of its internal staff and settled, tentatively, the terms of reference of the project. It is hoped that a Project Director will be appointed in the near future and that research can commence during the coming summer months.

#### FUTURE PROGRAMME

As we have indicated in the Introduction, it is not an easy task to formulate priorities and to allocate limited resources among our many projects, all of which are important and call for attention. The anticipated completion during the coming year of the project on the Law of Trusts, and the possible completion of the project on the Enforcement of Judgment Debts, will obviously lessen the pressures that are now upon the Commission. Thereafter, we will be able to concentrate more fully on the projects that remain on our programme, and to consider possible additions thereto.

#### LIAISON WITH OTHER JURISDICTIONS

In the process of law reform it is important to consider developments that occur elsewhere. Accordingly, we always regard it as a privilege to receive visitors from outside our own jurisdiction.

Our visitors, whom we were most pleased to receive, included: Sir William Randolph Douglas, the Chief Justice of Barbados; the Honourable Mr. Justice Didcott, Supreme Court of Natal, South Africa; the Honourable Mr. Justice Lameck Mfalila, High Court of Tanzania, the United Republic of Tanzania; His Honour Judge Ioannis Boyadjis, Senior District Judge, Nicosia, Cyprus; Sir Rupert Cross, Vinerian Professor of English Law, All Souls College, Oxford University; Michael J. Owen, Esq., Barrister and Solicitor of the Supreme Court of Victoria, Australia; Professor J. Phillips of the Faculty of Law, University of Melbourne, Australia; Professor Kenneth C. Sutton of the Faculty of Law, University of Queensland, Australia; Professor Jennifer Temkin of the Department of Law, London School of Economics and Political Science, University of London; and, Professor Graham Zellick of the Faculty of Laws, Queen Mary College, University of London.

Our visitors during this past year included members of other Canadian Law Reform Agencies: namely, Arthur L. Close, Esq., Commissioner, Law Reform Commission of British Columbia; W. H. Hurlburt, Esq., Q.C., Director, The Institute of Law Research and Reform, Alberta; and, Dr. Olive M. Stone, formerly of The Institute of Law Research and Reform. Not infrequently it happens that the research interests of the Canadian Law Reform Agencies coincide, and we are grateful for every opportunity to discuss problems of mutual interest.

In August, 1979 the Commission was represented by the Chairman and Counsel at a meeting of the Canadian Law Reform Agencies at Saskatoon and, immediately thereafter, by the Chairman, at the Sixty-first Annual Meeting of the Uniform Law Conference of Canada, in the same city.



During this past year, the Commission has taken the opportunity to visit five Law Schools, four within Ontario and one in the Province of Quebec. The Chairman and Counsel visited the Law Schools of the University of Western Ontario, and the University of Windsor; the Chairman, the Honourable R. A. Bell and Counsel visited the Law School of the University of Ottawa; the Chairman and M. A. Springman, Esq., visited Queen's University; and, the Chairman visited the Law School of McGill University. We were warmly received by the Deans of these Law Schools, by members of the Faculty and by the student body. So too, the Chairman was the guest of the Cochrane Law Association and the County of York Law Association, and spoke of the work of the Commission. We are much obliged to all those whose efforts combined to make our visits both successful and enjoyable.

#### TABLE OF IMPLEMENTATION

Attached to this Report as Appendix A is a list of the Reports that have been prepared and submitted by the Commission since its inception in 1964, together with a table setting out the extent to which legislation concerning our proposals has been enacted.

#### ACKNOWLEDGMENTS

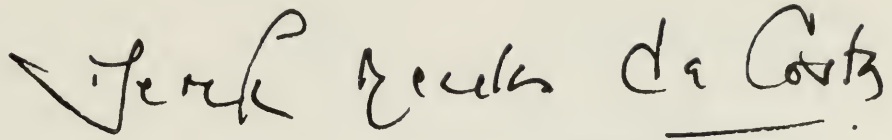
Attached to this Report are two additional appendices relating to the membership and staff of the Commission. In Appendix B, we schedule two formal documents dealing with changes in the membership of the Commission that have occurred during the past year.

Appendix C consists of a list of the officers and permanent staff of the Commission. To those who have joined us during the past year, we extend a sincere welcome: Ann M. Merritt, B.A., LL.B., Larry M. Fox, Esq., LL.B., and Pamela M. Gibson, B.A., LL.B., as members of the legal research staff; and Miss Mary M. O'Hara, as a member of the administrative staff. The Commission regrets the loss of several of its administrative and legal staff during the past year. To Miss Julie O'Loughlin of the administrative staff we express our thanks and best wishes. To Jennifer K. Bankier and William A. Bogart, Esq., legal research officers, we acknowledge with gratitude our debt for their contribution to the work of the Commission, and in particular to the Class Actions project.

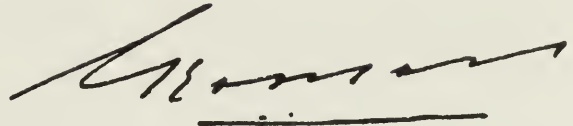
Our sincere thanks are also extended to the Secretary, Miss A. F. Chute, and to the administrative staff for all they have done to assist the Commission during the year.

May we also express our appreciation and thanks to you, Mr. Attorney, and to your Ministry, for the continuing interest, assistance and co-operation we have been afforded.

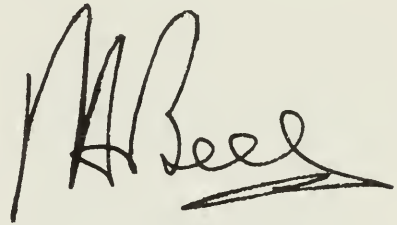
All of which is respectfully submitted.



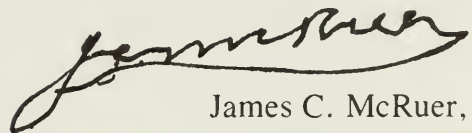
Derek Mendes da Costa,  
Chairman.



George A. Gale,  
Vice Chairman.



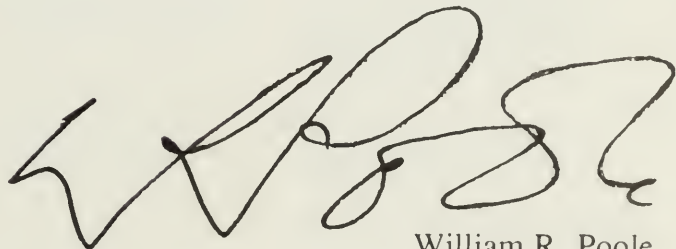
Richard A. Bell,  
Commissioner.



James C. McRuer,  
Commissioner.



Barry A. Percival,  
Commissioner.



William R. Poole,  
Commissioner.

March 31, 1980



## APPENDIX A

### REPORTS MADE BY THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Legislation Concerning Commission Proposals
No. 1 The Rule Against Perpetuities	February 1, 1965	<i>The Perpetuities Act</i> , S.O. 1966, c. 113
No. 1A Supplementary Report on the Rule Against Perpetuities	March 1, 1966	<i>do.</i>
No. 2 The Wages Act; Assignment of Wages	March 3, 1965	<i>The Wages Amendment Act</i> , S.O. 1968, c. 142
No. 3 Personal Property Security Legislation	May 28, 1965	<i>The Personal Property Security Act</i> , S.O. 1967, c. 72
No. 3A Supplementary Report on Personal Property Security Legislation	May 18, 1966	<i>do.</i>
The Evidence Act; Admissibility of Business Records	February 16, 1966	<i>The Evidence Amendment Act</i> , S.O. 1966, c. 51, s. 1
The Mechanics' Lien Act	February 22, 1966	<i>The Mechanics' Lien Act</i> , S.O. 1968-69, c. 65
Supplementary Report on The Mechanics' Lien Act	May 26, 1967	<i>do.</i>
Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	See <i>The Mechanics' Lien Amendment Act</i> , S.O. 1975, c. 43  <i>The Ministry of Transportation and Communications Creditors Payment Act</i> , S.O. 1975, c. 44  <i>The Public Works Creditors Payment Repeal Act</i> , S.O. 1975, c. 45
The Execution Act: Exemption of Goods from Seizure	December 9, 1966	<i>The Execution Amendment Act</i> , S.O. 1967, c. 27
The Law of Condominium	March 6, 1967	<i>The Condominium Act</i> , S.O. 1967, c. 13  See now <i>The Condominium Act</i> , S.O. 1978, c. 84

Title	Date of Report	Legislation Concerning Commission Proposals
Basis for Compensation on Expropriation	September 21, 1967	<i>The Expropriations Act</i> , S.O. 1968-69, c. 36
The Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	<i>The Sandwich, Windsor and Amherstburg Railway Amendment Act</i> , S.O. 1968, c. 120
Annual Report 1967	January 15, 1968	—
Certain Aspects of the Proposed Divorce Legislation contained in Bill C-187 (Can.)	January 19, 1968	<i>Divorce Act</i> , S.C. 1967-68, c. 24, s. 26
The Proposed Adoption in Ontario of The Uniform Wills Act	February 5, 1968	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40 See <i>The Registry Amendment Act</i> , S.O. 1978, c. 8, s. 1
The Protection of Privacy in Ontario	September 10, 1968	See <i>The Consumer Reporting Act</i> , S.O. 1973, c. 97
The Insurance Act, R.S.O. 1960, c. 190, s. 183, as amended by S.O. 1961-62, c. 63, s. 4 (commutation)	October 3, 1968	—
Trade Sale of New Houses and the Doctrine of Caveat Emptor	October 4, 1968	See <i>The Ontario New Home Warranties Plan Act</i> , S.O. 1976, c. 52
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	December 10, 1968	<i>The Landlord and Tenant Amendment Act</i> , S.O. 1968-69, c. 58
Limitation of Actions	February 3, 1969	See <i>The Highway Traffic Amendment Act</i> (No. 2), S.O. 1975, c. 37 <i>The Fatal Accidents Amendment Act</i> , S.O. 1975, c. 38 See now <i>The Family Law Reform Act</i> , S.O. 1978, c. 2, s. 60(4) <i>The Trustee Amendment Act</i> , S.O. 1975, c. 39



Title	Date of Report	Legislation Concerning Commission Proposals
Annual Report 1968	April 7, 1969	—
The Age of Majority and Related Matters	June 3, 1969	<i>The Age of Majority and Accountability Act</i> , S.O. 1971, c. 98
Status of Adopted Children	June 3, 1969	<i>The Child Welfare Amendment Act</i> , S.O. 1970, c. 96, s. 23  See now <i>The Child Welfare Act</i> , S.O. 1978, c. 85
Report on Family Law: Part I—Torts	November 4, 1969	<i>The Family Law Reform Act</i> , S.O. 1978, c. 2 (partial implementation)
Report on Section 20 of The Mortgages Act	March 12, 1970	<i>The Mortgages Amendment Act</i> , S.O. 1970, c. 54, s. 1
Report on Family Law: Part II—Marriage	April 6, 1970	<i>The Civil Rights Statute Law Amendment Act</i> , S.O. 1971, c. 50, s. 55 (partial implementation)  See now <i>The Marriage Act</i> , S.O. 1977, c. 42 (partial implementation)
Annual Report 1969	April 20, 1970	—
Report on Actions Against Representatives of Deceased Persons	November 30, 1970	<i>The Trustee Amendment Act</i> , S.O. 1971, c. 32, s. 2
The Coroner System in Ontario	January 25, 1971	<i>The Coroners Act</i> , S.O. 1972, c. 98  See <i>The Coroners Amendment Act</i> , S.O. 1978, c. 38
Sunday Observance Legislation	February 26, 1971	<i>The Retail Business Holidays Act</i> , S.O. 1975 (2nd Session), c. 9
Land Registration	March 23, 1971	See <i>The Corporations Tax Amendment Act (No. 2)</i> , S.O. 1979, c. 28
Annual Report 1970	March 31, 1971	—

Title	Date of Report	Legislation Concerning Commission Proposals
The Change of Name Act	May 31, 1971	<i>The Change of Name Amendment Act</i> , S.O. 1972, c. 44 See <i>The Change of Name Amendment Act</i> , S.O. 1978, c. 28
Section 16, The Mortgages Act Development Control	June 18, 1971 September 28, 1971	— <i>The Planning Amendment Act</i> , S.O. 1973, c. 168, s. 10 See now <i>The Planning Amendment Act</i> , S.O. 1979, c. 59
Powers of Attorney	January 11, 1972	<i>The Powers of Attorney Act</i> , S.O. 1979, c. 107
Occupiers' Liability	January 11, 1972	—
Consumer Warranties and Guarantees in the Sale of Goods	March 31, 1972	—
Review of Part IV of The Landlord and Tenant Act	March 31, 1972	<i>The Landlord and Tenant Amendment Act</i> , S.O. 1972, c. 123
Annual Report 1971	March 31, 1972	—
The Non-Possessory Repairman's Lien	October 4, 1972	—
Administration of Ontario Courts, Part I	February 26, 1973	See <i>The Administration of Courts Project Act</i> , S.O. 1975, c. 31 <i>The Judicature Amendment Act (No. 2)</i> , S.O. 1977, c. 51, s. 9
Annual Report 1972	March 31, 1973	—
Administration of Ontario Courts, Part II	May 23, 1973	See <i>The Administration of Courts Project Act</i> , S.O. 1975, c. 31
Report on Family Law: Part III—Children	September 25, 1973	<i>The Child Welfare Amendment Act</i> , S.O. 1975, c. 1 (partial implementation) See now <i>The Child Welfare Act</i> , S.O. 1978, c. 85 <i>The Succession Law Reform Act</i> , S.O. 1977, c. 40 (partial implementation) <i>The Children's Law Reform Act</i> , S.O. 1977, c. 41 (partial implementation)

Title	Date of Report	Legislation Concerning Commission Proposals
Report on The Solicitors Act	September 28, 1973	—
Report on Motor Vehicle Accident Compensation	November 6, 1973	—
Administration of Ontario Courts, Part III	December 17, 1973	<i>The Judicature Amendment Act</i> , S.O. 1975, c. 30 (partial implementation)
		See <i>The Administration of Courts Project Act</i> , S.O. 1975, c. 31
		<i>The Small Claims Courts Amendment Act</i> , S.O. 1977, c. 52 (partial implementation)
Report on Family Law: Part IV—Family Property Law	February 8, 1974	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40 (partial implementation)
		<i>The Family Law Reform Act</i> , S.O. 1978, c. 2 (partial implementation)
		See <i>The Land Titles Amendment Act</i> , S.O. 1978, c. 7
		<i>The Registry Amendment Act</i> , S.O. 1978, c. 8
Report on Family Law: Part V—Family Courts	February 8, 1974	See <i>The Unified Family Court Act</i> , S.O. 1976, c. 85
		<i>The Unified Family Court Amendment Act</i> , S.O. 1978, c. 68
		<i>The Children's Probation Act</i> , S.O. 1978, c. 41 (partial implementation)
Annual Report 1973	May 6, 1974	—
International Convention Providing a Uniform Law on the Form of the International Will	July 3, 1974	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40, s. 42

Title	Date of Report	Legislation Concerning Commission Proposals
Annual Report 1974	March 31, 1975	—
Report on Family Law: Part VI—Support Obligations	April 18, 1975	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40 (partial implementation)
Mortmain, Charitable Uses and Religious Institutions	February 27, 1976	<i>The Family Law Reform Act</i> , S.O. 1978, c. 2
		<i>The Religious Organizations' Lands Act</i> , S.O. 1979, c. 45
		<i>The Anglican Church of Canada Act</i> , S.O. 1979, c. 46
		<i>The Registry Amendment Act</i> , S.O. 1979, c. 94, s. 17
Landlord and Tenant Law	March 15, 1976	—
The Law of Evidence	March 29, 1976	—
Annual Report 1975	March 31, 1976	—
Report on Changes of Name	August 16, 1976	<i>The Vital Statistics Amendment Act</i> , S.O. 1978, c. 81, s. 1 (partial implementation)
Report on The Impact of Divorce on Existing Wills	February 28, 1977	<i>The Succession Law Reform Act</i> , S.O. 1977, c. 40, s. 17(2)
Annual Report 1976	March 31, 1977	—
Annual Report 1977	March 31, 1978	—
Report on Sale of Goods	March 30, 1979	—
Annual Report 1978	March 30, 1979	—
Report on Products Liability	November 16, 1979	—

Many of the Commission's earlier reports are no longer in print. Those that are still in print may be ordered from Publications Service, Ministry of Government Services, 5th Floor, 880 Bay Street, Toronto, Ontario, Canada, M7A 1N8.

## APPENDIX B

1. Extract from the Minutes of the Ontario Law Reform Commission, December 10, 1979.

The following motion presented by the Honourable R. A. Bell, P.C., Q.C., and seconded by William R. Poole, Q.C., was passed by unanimous vote:

That the members of the Commission record their pleasure and gratification upon the appointment of their long-time colleague, W. Gibson Gray, Q.C. as a Justice of the Supreme Court of Ontario, but couple it with a great sense of loss that his experience, scholarship and wisdom will no longer be available to Commission meetings.

A member of the Commission since its establishment in 1964, Mr. Gray has been an active participant in all the Commission's deliberations. To the discussions and debates, he contributed a profound knowledge of the law, extensive experience as a leader of the Bar, (which culminated in the eminence of Treasurer of the Law Society of Upper Canada), a special analytical talent and always a warm and friendly attitude. The imprint of his contributions appears throughout the Commission's reports.

His former colleagues congratulate him upon his elevation to the Bench and express warmest wishes for a successful and productive judicial career. The Commission's loss means that the Ontario Bench has attracted the services of a leading barrister who, we believe, will become a very distinguished jurist.

2. Statement issued by the Office of the Premier of Ontario, January 30, 1980.

The appointment of Barry A. Percival, of Toronto, to the Ontario Law Reform Commission was announced today by Premier William Davis.

Mr. Percival, whose three-year term is effective immediately, replaces W. Gibson Gray who has been appointed to the Supreme Court of Ontario.

Mr. Percival, who was born in Noranda, Quebec, was educated in North Bay and also attended Queen's University where he graduated in Mining Engineering in 1958. He continued his education at Osgoode



Hall Law School where he graduated with silver medal and honours in 1961.

Currently a partner in the Toronto law firm of Benson, McMurtry, Percival and Brown, Mr. Percival taught at Osgoode Hall Law School, assisted the Ontario Law Reform Commission in preparation of draft Occupiers Liability Act in 1972 and 1973 and is a former treasurer and director of the Advocates Society.

He is also a former trustee of the County of York Law Association, a member of the council of the Toronto Medical-Legal Society, a member of the Canadian Joint Council of the Canadian Bar Association and the Canadian Medical Association and a past president of the Lawrence Park Athletic Association.

Mr. Percival, who received his Queen's Counsel in 1975, was counsel for the Metro Toronto Police Department during the latter stages of the Morand Commission into Police Practices in Toronto and counsel for the Ontario Provincial Police during the Krever Commission Hearings into the Confidentiality of Health Records in 1979.

## APPENDIX C

### OFFICERS AND PERMANENT STAFF ONTARIO LAW REFORM COMMISSION

Chairman	Derek Mendes da Costa, Q.C., LL.B., LL.M., S.J.D.
Vice Chairman	Honourable George A. Gale, C.C., Q.C., LL.D.
Commissioners	Honourable Richard A. Bell, P.C., Q.C. Honourable James C. McRuer, O.C., LL.D., D.C.L. William R. Poole, Q.C. Barry A. Percival, Q.C.
Counsel	M. Patricia Richardson, B.A., M.A., LL.B.
Secretary and Administrative Officer	Miss A. F. Chute
Legal Research Officers	M. A. Springman, B.A., M.A., M.Sc., LL.B. Eric Gertner, LL.B., B.C.L. (Oxon) Ann M. Merritt, B.A., LL.B. L. M. Fox, LL.B. Pamela M. Gibson, B.A., LL.B.
Administrative Assistant	Mrs. Roslynne F. Mains, B.A.
Secretary to Chairman	Mrs. Stephanie Hlynka
Secretary to Vice Chairman	Mrs. E. N. Page
Secretary to Counsel	Mrs. D. M. Halyburton
Secretary to Administrative Officer	Mrs. B. G. Woodley
Secretaries to Legal Research Officers	Ms. Grace C. Novakowski, B.A. Mrs. E. M. Renda
Receptionist	Miss Mary M. O'Hara











